



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: M.R. Dillard Construction

File: B-271518.2

Date: June 28, 1996

James A. Pemberton, Esq., King & King, for the protester.

Robert W. Pessolano, Esq., Department of the Army, for the agency.

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DIGEST

An unsigned bid is responsive where the individual that signed the Certificate of Procurement Integrity was authorized to bind the bidder at the time the bid was submitted.

DECISION

M.R. Dillard Construction protests the cancellation of the award of contract No. DACA27-96-C-0040 to Dillard by the U.S. Army Corps of Engineers, Louisville District, under invitation for bids (IFB) No. DACA27-96-B-0014, for the installation of additional railroad track at Fort Campbell, Kentucky.¹

We sustain the protest.

Dillard submitted the low bid by the February 22, 1996, bid opening. Dillard's bid omitted the back of Standard Form (SF) 1442, Solicitation, Offer, and Award, included with the IFB, on which the bidder is to execute its offer and the government make award. The back of the SF 1442 contains an offer section including, among other items, spaces for the bidder to enter the name and title of the person authorized to sign the offer, a space for that person's signature, and spaces to acknowledge amendments. The offer section also provides a space for a bidder to enter the dollar amount of its bid, although in this case bidders were instructed to instead enter their prices on a bid schedule included on a separate continuation sheet. The back of the SF 1442 contained other material provisions such as the minimum bid acceptance period and the bidder's agreement to furnish performance and payment bonds. Dillard's bid did contain the front side of the SF 1442.

¹This decision is made under our express option procedures, 4 C.F.R. § 21.10 (1996).

Dillard's bid indicated that the bidding entity was owned by M.R. Dillard. The bid included a Certificate of Procurement Integrity (CPI) in the representations and certifications section, which was executed by Harry Q. Horner, Dillard's general superintendent with his original signature. M.R. Dillard's rubber stamp facsimile signature was used on documents throughout the rest of the bid, including an additional procurement integrity certification on the continuation sheet of the bid schedule as well as on the amendments and the required bid bond.

After bid opening, Dillard submitted the completed back of the SF 1442, which it explained had been signed by Mr. Dillard on the day of bid opening but was inadvertently omitted during the preparation of the bid package. Dillard also explained that Mr. Horner had the authority to contractually bind Dillard as well as to use the owner's rubber stamp facsimile signature. As a result, the Corps waived as a minor informality Dillard's failure to have included in its bid the back of the SF 1442 with its owner's signature, and awarded the contract to Dillard on March 7.

Following a protest filed with our Office on March 22 by Firth Construction Co., Inc., the second low bidder, the Corps determined that Dillard's bid should have been rejected as nonresponsive because it did not contain an original signature that could bind Dillard to the terms of the IFB. In this regard, the Corps found nothing submitted by Dillard prior to bid opening that authorized the use of the owner's rubber stamp facsimile signature or that authorized Dillard's superintendent to bind Dillard contractually. The Corps declared that it had improperly awarded the contract to Dillard and then took corrective action by canceling the award. We dismissed Firth's protest as academic on April 23. Dillard protested on April 26. The Corps is withholding award to Firth pending our decision.

As a general rule, an unsigned bid must be rejected as nonresponsive because without an appropriate signature, the bidder would not be bound should the government accept the bid. Stafford Grading and Paving Co., Inc., B-245907, Jan. 14, 1992, 92-1 CPD ¶ 66. Federal Acquisition Regulation (FAR) § 14.405(c) permits waiver of a bidder's failure to sign its bid only if--

"(1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or

"(2) The firm submitting a bid has formally adopted or authorized, before the date for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature"

Dillard concedes that by omitting the back page of the SF 1442, its bid, as submitted, was unsigned by its owner and was not accompanied by documentation which showed that the owner's rubber stamp facsimile signature used elsewhere in the bid was authorized. Nonetheless, Dillard contends that its omission of the back of the SF 1442 was properly waived by the Corps as a minor informality and that Dillard should retain the award because other evidence in its bid, specifically the original signature of Dillard's superintendent on the CPI, shows that Dillard intended to be bound by its bid. We agree.

A signed CPI included in a bid package is sufficient to show a bidder's intention to be bound by its bid, even if the bid is unsigned. Johnny F. Smith Truck and Dragline Serv., Inc., B-252136, June 3, 1993, 93-1 CPD ¶ 427; JRW Enters., Inc., B-238236, May 11, 1990, 90-1 CPD ¶ 464. We view a bidder's signature included in a bid package as the prime consideration for determining a bidder's intent to be bound; the fact that the signature appears in other than the usual location does not mean the bidder is any less committed to the provisions of the solicitation. Id. We also note that the individual executing the CPI must have the authority to bind the bidder to its bid as well as the certificate because of the significant legal obligations contained in the certificate, and the penalties imposed upon the certifying individual for violating the certificate, as well as the administrative penalties that might be imposed on the contractor for its employee's violation.² See Sweepster Jenkins Equip. Co., Inc., B-250480, Feb. 8, 1993, 93-1 CPD ¶ 111, rev'd on other grounds, Schmidt Eng'g & Equip., Inc.; Defense Logistics Agency-Recon, 72 Comp. Gen. 262 (1993), 93-1 CPD ¶ 470.

The Corps contends that the bid indicates that Dillard's owner, not Dillard's general superintendent, was the person authorized to sign Dillard's bid and bind the bidder. However, the record shows that Dillard's superintendent was indeed authorized to

²Since the contract was expected to exceed \$100,000, the IFB contained the CPI clause set forth at FAR § 52.203-8. The clause serves to implement the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423(e) (1994), which precludes federal agencies from making award to a competing contractor unless the officer or employee of the contractor responsible for submitting the offer or bid certifies in writing that neither he nor those employees who participated in preparing the bid have any information concerning violations or possible violations of the OFPP Act. C.B.C. Enters., Inc., 72 Comp. Gen. 275 (1993), 93-1 CPD ¶ 495. The activities prohibited by the OFPP Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. Id.

sign Dillard's bid on behalf of the owner at the time of bid opening. The Certification of Independent Price Determination included in the bid stated that Mr. Horner was an authorized agent of Dillard. In addition, Dillard, in response to Firth's earlier protest, supplied the Corps with copies of letters, signed by the owner during 1986, authorizing Mr. Horner to legally bind Dillard contractually by Mr. Horner's own signature and to use the owner's rubber stamp facsimile signature. The protester also submitted an affidavit from the owner reiterating Mr. Horner's authority to bind Dillard and authenticating the 1986 letters, which the owner stated continued in full force and effect. Our Office has long held that the evidence required to show the authority of an individual signing a bid may be presented after bid opening. 49 Comp. Gen. 527 (1970); Schmidt Eng'g & Equip., Inc.; Defense Logistics Agency-Recon, supra; Hutchinson Contracting, B-251974, May 18, 1993, 93-1 CPD ¶ 391. Accordingly, the original signature of Dillard's superintendent on the completed CPI in Dillard's bid sufficiently demonstrates Dillard's intent to be bound by its bid and permits its acceptance.³

The Corps nevertheless argues that Dillard's bid is nonresponsive because documentation showing authority to use the owner's rubber stamp facsimile signature was not provided by Dillard prior to bid opening as required, see Stafford Grading and Paving Co., Inc., supra, and the stamp, rather than any original signature by an authorized official, was used in connection with material provisions of the IFB, such as the additional procurement integrity certification included on the continuation sheet, the amendments, and the bid bond. However, as discussed further below, since Dillard was bound to its bid by virtue of Mr. Horner's execution of the CPI, Dillard's failure to include original signatures on other portions of the IFB was not material.

Specifically, the procurement integrity certification on the continuation sheet to the bid schedule, which was acknowledged by the rubber stamp signature of Mr. Dillard, imposed no legal requirements beyond those stated in the full text of the CPI in the IFB's representations and certifications section.⁴ By entering his

³Contrary to the Corps's assertion, Dillard's status as a sole proprietorship does not preclude it from being bound by an authorized individual acting on behalf of the owner. See Jordan Contracting Co.; Griffin Constr. Co., Inc., B-186836, Sept. 16, 1976, 76-2 CPD ¶ 250.

⁴The continuation sheet warned bidders that failure to complete the additional certification would render the bid nonresponsive. However, that certification is not the additional procurement integrity certification contemplated under FAR § 3.104-9(d) which may be requested by the agency, such as the certifications from others who participated in preparing or submitting the bid which the signer of the certificate is required to collect. See Sweepster Jenkins Equip. Co., Inc., supra.

original signature on the CPI in the representations and certifications section, Mr. Horner certified that he was the officer or employee responsible for the preparation of the bid and that to the best of his knowledge, each officer, employee, agent, representative, and consultant of Dillard who had participated personally and substantially in the preparation or submission of the bid had certified his or her familiarity and compliance with the requirements of the relevant OFPP Act provisions. Therefore, the fact that the additional certification on the continuation sheet was acknowledged by the Mr. Dillard's rubber stamp facsimile signature does not render the bid nonresponsive. Further, although Mr. Dillard's name was entered on the continuation sheet beneath his rubber stamp signature as the officer or employee responsible for the offer, we think the identify of the actual certifier was clearly established by the full text of the CPI, which was personally executed by Mr. Horner and properly identified Mr. Horner as the "certifier." See Aerospace Design, Inc., B-259350, Mar. 23, 1995, 95-1 CPD ¶ 161.

In addition, notwithstanding that the owner's facsimile signature was stamped on the first pages of the amendments which Dillard included in its bid, the superintendent's authorized original signature elsewhere in the bid ensures that acceptance of the bid will, as a legal matter, obligate Dillard to perform in accordance with the terms of the solicitation, including the amendments, at the bid price. See First Fed. Data Servs., B-216487, Dec. 21, 1984, 84-2 CPD ¶ 685. Likewise, regarding Dillard's use of the owner's rubber stamp signature on its bid bond, we do not regard the signature on the bid bond as a material requirement with which the bidder must comply in order to be responsive where, as here, the bond is submitted with a bid which contains a signature sufficient to bind the bidder. See Noslot Pest Control, Inc., 68 Comp. Gen. 396 (1989), 89-1 CPD ¶ 396; The Ryan Co., B-245659, Oct. 23, 1991, 91-2 CPD ¶ 365.

Finally, the fact that Dillard's bid did not include the back page of the 1442 did not render it nonresponsive, inasmuch as Dillard bound itself to the provisions (e.g., the minimum bid acceptance period and the requirements to furnish performance and payment bonds) contained thereon by acknowledging receipt of an amended version of the SF 1442, containing the same material provisions as the omitted SF 1442. See Weber Constr., B-233848, Mar. 27, 1989, 89-1 CPD ¶ 309.

As Dillard's bid was responsive and should have properly been accepted by the Corps for award, we recommend that the Corps reinstate the award of the contract to Dillard. In addition, we recommend that Dillard be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Dillard's certified claim for such costs, detailing the time expended and costs

incurred, should be submitted directly to the agency within 90 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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of the United States